

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 18th day of October, two thousand seven.

PRESENT:

HON. CHESTER J. STRAUB,
HON. ROSEMARY S. POOLER,
HON. BARRINGTON D. PARKER,
Circuit Judges.

QING BO QU,
Petitioner,

v.

07-0148-ag
NAC

PETER D. KEISLER, Acting, ATTORNEY GENERAL¹,
Respondent.

¹Pursuant to Appellate Fed. R. App. P. 43(c)(2), Acting Attorney General Peter D. Keisler is automatically substituted for former Attorney General Alberto R. Gonzales as respondent in this case.

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3 **FOR PETITIONER:** **Joan Xie, New York, New York.**

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5 **FOR RESPONDENT:** **Peter D. Keisler, Assistant Attorney**
6 **General, Civil Division, Lisa**
7 **Arnold, Senior Litigation Counsel,**
8 **Keith McManus, Trial Attorney,**
9 **Office of Immigration Litigation**
10 **Civil Division, U.S. Department of**
11 **Justice, Washington, D.C.**
12

13 UPON DUE CONSIDERATION of this petition for review of a
14 Board of Immigration Appeals ("BIA") decision, it is hereby
15 ORDERED, ADJUDGED, AND DECREED that the petition for review
16 is GRANTED in part and DENIED in part, the BIA's order is
17 VACATED, and the case is REMANDED for further proceedings
18 consistent with this order.

19 Petitioner Qing Bo Qu, a native and citizen of China,
20 seeks review of a December 21, 2006 order of the BIA
21 affirming the July 14, 2005 decision of Immigration Judge
22 ("IJ") Paul DeFonzo, denying Qu's applications for asylum,
23 withholding of removal, and relief under the Convention
24 Against Torture ("CAT"). In re Qing Bo Qu, No. A97 160 378
25 (B.I.A. Dec. 21, 2006), aff'g No. A97 160 378 (Immig. Ct.
26 N.Y. City July 14, 2005). We assume the parties'
27 familiarity with the underlying facts and procedural history
28 in this case.

1 When the BIA adopts and supplements the IJ's decision,
2 this Court reviews the decision of the IJ as supplemented by
3 the BIA. See *Yu Yin Yang v. Gonzales*, 431 F.3d 84, 85 (2d
4 Cir. 2005). However, when the BIA affirms the IJ's decision
5 in all respects but one, we review the IJ's decision as
6 modified by the BIA decision, i.e., "minus the single
7 argument for denying relief that was rejected by the BIA."
8 *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 522
9 (2d Cir. 2005). Here, the BIA supplemented the IJ's
10 decision and rejected the IJ's adverse credibility finding
11 but otherwise affirmed the decision in all respects. Thus,
12 we will review the IJ's decision as supplemented and
13 modified by the BIA, minus the IJ's adverse credibility
14 finding. See *Yu Yin Yang*, 431 F.3d at 85; *Xue Hong Yang*,
15 426 F.3d at 522.

16 We review the agency's factual findings under the
17 substantial evidence standard, treating them as "conclusive
18 unless any reasonable adjudicator would be compelled to
19 conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); see,
20 e.g., Zhou Yun Zhang v. INS, 386 F.3d 66, 73 & n.7 (2d Cir.
21 2004), overruled in part on other grounds by Shi Liang Lin
22 v. U.S. Dep't of Justice, 494 F.3d 296, (2d Cir. 2007) (en

1 banc). However, we will vacate and remand for new findings
2 if the agency's reasoning or its fact-finding process was
3 sufficiently flawed. Cao He Lin v. U.S. Dep't of Justice,
4 428 F.3d 391, 406 (2d Cir. 2005).

5 Here, the agency's finding that Qu failed to establish
6 a nexus between her treatment by the Chinese authorities and
7 a protected ground specified in the asylum statute is not
8 supported by substantial evidence. See 8 U.S.C.
9 § 1101(a)(42). In order to establish persecution on account
10 of political opinion, an applicant must show that the
11 persecutor is motivated by his or her perception of the
12 applicant's opinion, rather than by his or her own political
13 beliefs. See Yueqing Zhang v. Gonzales, 426 F.3d 540, 545
14 (2d Cir. 2005). However, it is not necessary that the
15 applicant in actuality hold that political belief; it is
16 well-established that "an imputed political opinion, whether
17 correctly or incorrectly attributed, can constitute a ground
18 of political persecution within the meaning of the
19 Immigration and Nationality Act." See Chun Gao v. Gonzales,
20 424 F.3d 122, 129 (2d Cir. 2005). In this case, neither the
21 IJ nor the BIA gave adequate consideration to the
22 possibility that the Chinese authorities imputed Qu's

1 husband's political opinion to Qu herself and mistreated her
2 on that basis.

3 The IJ concluded that the police arrested Qu not
4 because of any actual or imputed political opinion but
5 simply because she was creating a disturbance in a public
6 space. However, the IJ provided no analysis of the
7 motivation behind the mistreatment that Qu endured after her
8 arrest, during her one-month long detention. Even assuming
9 that the police arrested Qu for, as the IJ put it, creating
10 "a ruckus at the citizens complaint office," it does not
11 necessarily follow that they subsequently beat and
12 interrogated her for the same reason. Cf. Yan Fang Zhang v.
13 Gonzales, 452 F.3d 167, 172 (2d Cir. 2006) (finding that the
14 police's removal of petitioner from factory premises where
15 she was participating in a demonstration, without
16 subsequently detaining or mistreating her, did not
17 constitute persecution on the basis of political opinion).

18 Additionally, the agency did not consider the
19 possibility that the Chinese authorities had mixed motives
20 for their treatment of Qu. We have held that "[t]he plain
21 meaning of the phrase 'persecution on account of the
22 victim's political opinion' does not mean solely on account

1 of the victim's political opinion." Osorio v. INS, 18 F.3d
2 1017, 1028 (2d Cir. 1994). Persecutors may have multiple
3 motives for their acts, only some of which are related to a
4 protected ground. See In re S-P-, 21 I. & N. Dec. 486, 489
5 (B.I.A. 1996). In such cases, "an applicant does not bear
6 the unreasonable burden of establishing the exact motivation
7 of a 'persecutor' where different reasons for action are
8 possible." Id. at 489-90 (B.I.A. 1996) (quoting Matter of
9 Fuentes, 19 I. & N. Dec. 658, 662 (B.I.A. 1988)). The IJ
10 may have been correct that the police arrested Qu because
11 she was disturbing the peace and thus breaking the law.
12 However, this does not preclude the possibility that they
13 were also motivated by their perceptions of Qu's political
14 opinion when they arrested her or engaged in their
15 subsequent mistreatment of her.

16 The agency's failure to consider adequately the issues
17 of imputed political opinion and mixed motives played a
18 large part in its finding that Qu had not suffered past
19 persecution and did not have a well-founded fear of future
20 persecution on account of her political opinion. See Uwais
21 v. U.S. Att'y Gen., 478 F.3d 513, 519 (2d Cir. 2006). The
22 agency's finding that Qu failed to establish a nexus to a

1 protected ground was also the primary basis for its denial
2 of Qu's claim for withholding of removal.² See id. It is
3 therefore not possible to predict with confidence that the
4 agency would reach the same conclusion if it engaged in the
5 proper analysis and applied the appropriate legal standards.
6 See id. Accordingly, the petition will be granted and the
7 case remanded to the BIA for further consideration of Qu's
8 asylum and withholding of removal claims.

9 However, Qu's petition is denied with respect to her
10 CAT claim. Qu did not request CAT relief before the IJ
11 despite ample opportunity to do so and did not protest when
12 the IJ told the government attorney at her hearing that she
13 had raised no CAT claim. Nonetheless, this Court may review
14 Qu's CAT claim because Qu raised the claim in her brief to
15 the BIA and the BIA explicitly addressed the claim in its
16 decision. Xian Tuan Ye v. DHS, 446 F.3d 289, 296-97 (2d
17 Cir. 2006).

18 Qu argues that the agency failed to engage in a
19 sufficiently thorough, independent analysis of her CAT

²We reject the government's argument that Qu waived and failed to administratively exhaust her withholding claim. The arguments in Qu's brief that address the agency's nexus finding apply to Qu's withholding claim as well as to her asylum claim.

1 claim. However, the BIA did perform an independent analysis
2 of her CAT claim, finding that the record did not establish
3 a clear probability that Qu would be tortured upon returning
4 to China. Because no reasonable factfinder would be
5 compelled to conclude to the contrary, we deny the petition
6 for review with respect to Qu's CAT claim. Zhou Yun Zhang,
7 386 F.3d at 73 & n.7.

8 For the foregoing reasons, the petition for review is
9 GRANTED in part and DENIED in part. The BIA's order is
10 VACATED, and the case is remanded to the BIA for further
11 proceedings consistent with this order.
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13 FOR THE COURT:
14 Catherine O'Hagan Wolfe, Clerk
15

16 By: _____
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